

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION**

**RAYCO DISTRIBUTORS, INC.;**  
**DOUGLAS RAYBURN; AND JERE RAYBURN**

**PLAINTIFFS**

**v.**

**CIVIL ACTION NO. 2:10cv158-MTP**

**ENTREPRENEUR SPORTING TECHNOLOGIES, LLC;**  
**STEPHEN G. DEAN; AND JOHN AND JANE DOES 1-5**

**DEFENDANTS**

**ORDER**

Presently before the Court is Defendants' [30] Motion to Strike Plaintiffs' Expert Designation. For the reasons discussed below, this motion will be granted.

The [8] Case Management Order established January 10, 2011 as the expert designation deadline. Plaintiffs designated their expert on June 1, 2011. *See* docket entry [29].<sup>1</sup>

Defendants, citing *Geiserman v. MacDonald*, 893 F.2d 787 (5th Cir. 1990),<sup>2</sup> offer several valid arguments in support of their [30] Motion to Strike Plaintiffs' Expert Designation. These arguments include: no explanation for the tardy designation; Defendants relied on Plaintiffs' failure to timely designate experts and did not designate any of their own, thereby resulting in prejudice to them; and the [29] designation was not accompanied by a report.<sup>3</sup> Because of Plaintiffs' silence in not responding to the motion, the Court must accept Defendants' position as

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<sup>1</sup>Although the [8] Case Management Order was amended, *see* docket entry [16], the expert designation deadline of January 10, 2011 remained unchanged.

<sup>2</sup>*Geiserman* discusses the factors in excluding evidence not properly designated: "(1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice." 893 F.2d at 791.

<sup>3</sup>*See* Fed. R. Civ. P. 26(a)(2)(B).

to the importance of the testimony.<sup>4</sup> In addition, “[b]ecause of a trial court’s need to control its docket, a party’s violation of the court’s scheduling order should not routinely justify a continuance.” *Hamburger v. State Farm Mutual Automobile Insurance Co.*, 361 F.3d 875, 884 (5th Cir. 2004) (also observing that “the failure to satisfy the rules would never result in exclusion, but only in a continuance”). All these reasons warrant exclusion of Plaintiffs’ expert.

Moreover, Plaintiffs failed to respond or request an extension of time to serve a response to this particular motion. The time for a response has long since expired. *See* L. U. Civ. R. 7(b)(3)(E) (“If a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.”).

**IT IS, THEREFORE, ORDERED:**

Defendants’ [30] Motion to Strike Plaintiffs’ Expert Designation is **GRANTED**.

**SO ORDERED** this the 12th day of August, 2011.

s/ Michael T. Parker  
United States Magistrate Judge

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<sup>4</sup>As Defendants point out, without a report they (and by implication the Court) are limited “to the extent [they] can evaluate what Plaintiff’s expert’s testimony will be.” [31] at p. 2.